

EDITOR'S NOTE: Amended by Order dated October 11, 1988, found at the end of this decision at pages 116A and B.

GEORGE AND REDA HOWARD

IBLA 86-1430

Decided August 31, 1988

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring the Turtle Nos. 1 through 3 lode mining claims null and void ab initio. A MC 256302 through A MC 256304.

Affirmed.

1. Mining Claims: Lands Subject to--Courts--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Reclamation Withdrawals

Where a Federal district court issues a preliminary injunction which has the effect of suspending the termination of a first-form reclamation withdrawal which segregated a tract from mineral entry, thereby reinstating the terms of the withdrawal, a mining claim subsequently located on that tract is properly declared null and void ab initio.

APPEARANCES: George and Reda Howard, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

George and Reda Howard have appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated June 23, 1986, declaring the Turtle Nos. 1 through 3 lode mining claims (A MC 256302 through A MC 256304) null and void ab initio.

The decision on appeal provides as follows:

Pursuant to the requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1744, and the implementing regulations in 43 CFR 3833.1-2, notices of mining claim location for the above-referenced lode mining claims were filed for recording in the Arizona State Office, Bureau of Land Management on June 20, 1986. Said claims were located May 29, 1986.

The location notices and accompanying map show the claims to be located on the following land:

Gila and Salt River Meridian, Arizona[,] T. 9 N., R. 3 W.[,] Sec. 31,
SW 1/4 (within Lots 8, 9, and 10, SE 1/4 SW 1/4)

The above-described lands were withdrawn on September 14, 1945 under a First Form Reclamation withdrawal for the Hassayampa project. Effective April 13, 1983, Public Land Order 6353 [48 FR 9007 (Mar. 3, 1983)] revoked the withdrawal and restored the lands to entry. * * * Although the withdrawal terminated on the above date the National Wildlife Federation has sued the Bureau of Land Management for taking actions to revoke and restore withdrawals that were in effect on January 1, 1981. On February 14, 1986, a Federal District Court preliminary injunction was issued (National Wildlife Federation v. Burford, et al., Civil Action No. 85-2238) which enjoins BLM from accepting new claims on these lands and from taking further action to approve plans of operation.

The BLM has been issued the following instructions: If a mining claim is located after February 14, 1986, on lands subject to the lawsuit that were closed to the mining laws, the claim is null and void ab initio, and is to be rejected * * *. Therefore, the subject mining claims are hereby declared null and void ab initio. Your \$15 recordation fee will be refunded via U.S. Treasury.

The preliminary injunction to which BLM refers arose from a suit before the United States District Court for the District of Columbia, brought by the National Wildlife Federation (NWF), challenging BLM's revocation of certain public land withdrawals. In granting NWF's motion for a preliminary injunction, the district court prohibited the Department from "modifying, terminating, or altering any withdrawal, classification or other designation governing protection of the lands in the public domain in effect on January 1, 1981 or taking any action inconsistent with such withdrawals, classifications or other designations." National Wildlife Federation v. Burford, 676 F. Supp. 280, 281 (D.D.C. 1986), aff'd, 835 F.2d 305 (D.C. Cir. 1987); see also National Wildlife Federation v. Burford, 676 F. Supp. 271 (D.D.C. 1985).

This Board has recently considered the effect of this preliminary injunction, expressly ruling that it reinstated the terms of any classification or withdrawal that had been terminated or revoked by the Department after January 1, 1981. Chester C. Reddeman, 101 IBLA 33, 37 (1988). Thus, in the present case, the September 1945 reclamation withdrawal was in effect on January 1, 1981, and was subsequently terminated on April 13, 1983, prior to the district court's February 1986 preliminary injunction. Accordingly, the April 1983 termination of the September 1945 classification was suspended by the preliminary injunction. Further, the injunction required that BLM administer the land under the terms of the reclamation withdrawal.

It is very well established that lands that are subject to a first-form reclamation withdrawal are not open to mineral entry, and that mining claims located on such withdrawn lands are properly declared null and void

ab initio, that is, without legal effect from the beginning. Lynn H. Grooms, 99 IBLA 237 (1987); William B. Rawlings, 85 IBLA 243 (1985), and cases cited therein. BLM's decision must be affirmed.

Appellants argue that since the district court has made no final ruling in the case, BLM is under no duty at present to find their claims invalid, and that only if and when the district court finds in favor of NWF can BLM be properly enjoined from accepting new claims on these lands. Appellants misperceive the effect of a preliminary injunction.

BLM is under a duty to obey the district court's preliminary injunction, or face civil or criminal contempt charges. 18 U.S.C. §§ 401(3) and 402 (1982); United States v. United Mine Workers, 330 U.S. 258, 302-07 (1947). A Federal agency that is subject to an injunction is expected to obey that order until it is modified or reversed, and, where an injunction has been issued, it has "no discretion to exercise," even if it disagrees with the court's directive. GTE Sylvania, Inc. v. Consumers Union, 445 U.S. 375, 386 (1980). The fact that the injunction is a preliminary injunction does not alter this obligation. Id.

Further, appellants are mistaken in their apparent presumption that the absence of a final determination from the district court indicates that there is no legal basis for reclosing these lands. In fact, the matter has been thoroughly considered, both by the district and circuit courts. A preliminary injunction is properly issued only where, among other things, it is likely that the party seeking the injunction will prevail on the merits before the court. National Wildlife Federation v. Burford, 835 F.2d at 318, and cases cited. Thus, while it is true that the preliminary injunction is not the final ruling in the case, by issuing it, the district court has ruled that it is likely that NWF's suit will prevail, and this ruling has been affirmed by the Court of Appeals for the District of Columbia Circuit. The clear import of this ruling is that certain lands must be reclosed to entry.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

Anita Vogt
Administrative Judge
Alternate Member

October 11, 1988

IBLA 86-1430	:	A MC 256302 through 256304;
	:	A MC 256790
GEORGE AND REDA HOWARD	:	
	:	Mining Claims
	:	
	:	<u>George Howard</u> , 104 IBLA 114
	:	(1988) Amended

ORDER

On August 31, 1988, we issued a decision in the above-captioned matter affirming a decision of the Arizona State Office, Bureau of Land Management (BLM), declaring the Turtle Nos. 1 through 3 lode mining claims (A MC 256302 through -04) null and void ab initio. George Howard, 104 IBLA 114 (1988). BLM's decision concerning these three claims was issued on June 23, 1986.

BLM has advised us that it also issued a second decision, dated July 2, 1986, declaring the Turtle No. 4 lode mining claim (A MC 256780) null and void ab initio for the same reasons that it voided the Turtle Nos. 1 through 3 claims. George and Reda Howard's (the Howards') notice of appeal referred only to BLM's decision of June 23, 1986, but mentioned the Turtle No. 4 claim both by name and by BLM serial number. We are satisfied that the Howards intended to appeal BLM's decision of July 2, 1986. Thus, our decision in George Howard, supra, which neglected to consider the Turtle No. 4 claim, must be amended to do so.

Having fully considered the status of the Turtle No. 4 claim, we have determined that our decision in George Howard, supra, must be modified as follows:

On page 114, the synopsis is deleted and replaced with the following:

Appeal from decisions of the Arizona State Office, Bureau of Land Management, declaring the Turtle Nos. 1 through 4 lode mining claims null and void ab initio. A MC 256302 through A MC 256304, and A MC 256780.

Affirmed.

104 IBLA 116A

On page 114, the entire first paragraph and the first sentence in the second paragraph in the main body of the decision are deleted and replaced with the following:

George and Reda Howard have appealed from two decisions of the Arizona State Office, Bureau of Land Management (BLM), dated June 23, and July 2, 1986, respectively declaring the Turtle Nos. 1 through 3 lode mining claims (A MC 256302 through -04) and the Turtle No. 4 lode mining claim (A MC 256780) null and void ab initio.

BLM's June 23, 1986, decision provides as follows:

The following new language is inserted in the middle of page 115 of our decision, immediately following the end of the passage quoting BLM's June 23, 1986, decision:

The language of BLM's July 2, 1986, decision was substantially similar to its decision of June 23, 1986, varying only in its description of the Turtle No. 4 claim, which was described as located on the following land: Gila and Salt River Meridian, Arizona, T. 9 N., R. 3 W., Sec. 31, E 1/2 SW 1/4 (within Lot 8, SE 1/4 SW 1/4).

On page 116 of our decision the following sentence replaces the last sentence of the partial paragraph beginning the page:

BLM's decisions of June 23 and July 2, 1986, must be affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our decision in George Howard, supra, is amended as set out above.

David L. Hughes
Administrative Judge

I concur:

Anita Vogt
Administrative Judge
Alternate Member

APPEARANCES:

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